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Spies and journalists: Towards an ethical framework?

The publication by the Guardian in the UK from mid-2013 of secret intelligence documents leaked by the former NSA contractor Edward Snowden was highly controversial. The newspaper was attacked by the UK government, intelligence chiefs, some other news media and a range of other critics for publishing the previously secret documents. The Snowden affair was just the latest episode where the news media sought to publish information about intelligence operations, usually revealing some area of significant concern, in the face of government objections. In each case negotiations between the state and the news media have been adversarial. At the heart of this reoccurring problem is the balance in liberal democracies between national security and the freedom of the press to inform the public over matters of concern. This involves a complex set of ethical issues. This paper seeks to lay out the ethical terrain for this discussion incorporating the emergent discipline of intelligence ethics. The paper also takes the first steps in discussing a bipartisan framework for an ethical relationship between intelligence agencies and the news media that would allow accurate information to enter the public domain without recklessly jeopardising legitimate national security. It examines the various bodies that could act as an honest broker between the two sides but concludes that identifying such an organisation that would be trusted at this time is difficult.

Keywords: spies, journalist, ethics, national security, press freedom

Introduction

On Saturday 20 July 2013, at the height of the controversy over the UK publication of the documents leaked by the former NSA contrac-

tor Edward Snowden, in the basement of the *Guardian's* King's Cross, London, offices, a senior editor and a *Guardian* computer expert used various tools to pulverise the hard drives and memory chips on which the encrypted files had been stored. The decision was taken after a threat of legal action by the UK government that could have stopped reporting on the extent of American and British government surveillance revealed by the documents. It was only the most absurd moment in the tense negotiations between the *Guardian* and government about what documents would be published. It had been a protracted negotiation.

The Snowden affair is just the latest episode where the news media sought to publish information about intelligence operations, usually revealing some area of significant concern, in the face of government objections. In each case, negotiations between the state and the news media have been adversarial and the government position was that publication would harm national security. In retrospect, government claims largely look insubstantial and reveal a primary intention of seeking to protect them and/or the intelligence community from embarrassment rather than national security. The epitome of this episodic confrontation was the *Spycatcher* affair of the 1980s when the UK government went to the Australian courts to unsuccessfully block publication of a book by Peter Wright, a former senior MI5 officer, revealing profound concerns over the operations of the security service (Wright 1987). However, it is also true that in publication there can be national security issues that journalists are unaware of. Any improvement in relations would have to be based on trust, where often there is little (see Phythian 2005, Lashmar 2013). Following on from the ad-hoc adversarial negotiations at the UK end of the Snowden affair it is not unreasonable to assert there needs to be more mature and responsible approach from Whitehall and the UK news media.

At the heart of this reoccurring problem is the balance between national security and the freedom of the press to inform the public over matters of concern. This paper seeks to lay out the ethical terrain for this discussion. The academic discourse of ethics and intelligence has only been a serious if limited area of study in the last decade or so (see Perry 1995, Herman 2001: 201-227, Herman 2004, Andregg 2007, McCoy 2006, Dover and Goodman 2009 and Bellaby 2012). Indeed, the *modus operandi* of intelligence agencies, fuelled by popular fictional representation, are popularly thought

to be utilitarian by nature, often characterised as tactical illegality and unethical behaviour undertaken in the over-arching interest of the greater good.

The idea that intelligence agencies should have a more robust ethical dimension has gained traction over the last 50 years. The use of 'Weapons of Mass Destruction' intelligence to justify the invasion of Iraq in 2003, later revealed to be inaccurate or even concocted, was seen to represent the politicisation of MI6 by providing the pretext to support the US President's desire to depose Saddam Hussein and his Ba'athist regime. The reputation of the Central Intelligence Agency (CIA) suffered from this politicisation too (see Lucas 2011). The discussion over intelligence ethics may be limited but it is timely as the methods used by Western nations in the 'the war on terror' have resulted in increasing pressure for consideration of human rights in the intelligence setting especially after cases of the torturing of suspects, drone warfare and rendition.

This author has looked at many of the ethically based confrontations between intelligence and the news media and concludes that there are major ethical issues to consider for both disciplines. This paper attempts to take the first steps in discussing a bipartisan framework for an ethical relationship between intelligence agencies and the news media that would allow accurate information to enter the public domain without jeopardising legitimate national security. It is necessary to map the zone between the two disciplines and discuss how it is best regulated.

Intelligence and ethics

There can be no doubt that intelligence has to face serious ethical questions in a modern society. In 1995, Perry said:

The sources and methods of espionage, the goals and tactics of covert action, and the professional conduct of intelligence officers are matters typically hidden from public scrutiny, yet clearly worthy of public debate and philosophical attention.

Perry said that while the ethical questions had been raised they were mostly procedural:

But what is often missed in such examinations is substantive ethical analysis of intelligence operations themselves (Perry 1995:1).

A leading UK intelligence academic Mark Phythian points out that ethical issues are inseparable from intelligence activities and, like the question of failure, can take in the entire intelligence cycle.

Targeting of 'friendly' states, the very notion of covert surveillance, and the more intrusive forms of collection, together with the question of covert action and other intelligence-led policy responses, all raise fundamental ethical questions. There is a growing body of work on this subject most recently clearly informed by developments in the 'war on terror', specifically the torture debate in the US and the associated question of extraordinary rendition – in effect, the outsourcing of torture by the US. Hence, more than ever before there is a need to adapt the just war paradigm to construct a concept of *jus in intelligentia* (Gill, Marrin and Phythian 2009: 63-64).

Academics are using a range of theoretical concepts to develop a framework. One method has been to adapt the 'just war' concept. Bellaby has outlined a possible ethical structure for intelligence. As he points out:

As the professional practice of intelligence collection adapts to the changing environment and new threats of the twentieth first century, many academic experts and intelligence professionals call for a coherent ethical framework that outlines exactly when, by what means and to what ends intelligence is justified (Bellaby 2012: 1).

There has been an impact. For example, the US Office of the Director of National Intelligence (DNI) posts an ethics statement online: namely the *Principles of professional ethics for the intelligence community*:

As members of the intelligence profession, we conduct ourselves in accordance with certain basic principles. These principles are stated below, and reflect the standard of ethical conduct expected of all Intelligence Community personnel, regardless of individual role or agency affiliation (DNI 2015:1).

Application is everything in ethics but a clear statement can be indicative of a change of approach. Besides issues of legality, competence, politicisation and domain expansion, one of the tension points for the news media is where the intelligence agencies expand from intelligence gathering to proactive covert operations.

Journalism and ethics

One of the leading journalism academics writing on ethics, Chris Frost, has said:

In practice ethics is a way of studying morality which allows decisions to be made when individuals face specific cases of moral dilemma. At their most praiseworthy, the journalist's tussles are going to be between the right of the public to know and some other moral tenet – perhaps the invasion of an individual's privacy – which would militate against publication (2011: 10).

Ethical debates have been a feature of journalism practice since inception. Attempts at resolution have been manifest in terms of regulation, codes and law. Incorporating ethical practice has been a consistent aspiration for journalism since at least the turn of the 20th century (NUJ) but the news media is a heterogeneous entity and has palpably failed to maintain an ethical framework across the industry (Curran and Seaton 1999, Davies 2008 and Davies 2014). In terms of discussion within the discipline this has consolidated around the move to university-level education for journalists. In the United States this began with the foundation of the Journalism School at Missouri University, Columbia, in 1908. In the UK journalism education did not really start until 1970 when University College, Cardiff, launched a journalism course. Ethics have been at the heart of debate between academics and journalists. Certainly academics have seen it as an important part of their role as to bring the more extreme or improper behaviour of journalists to account. While until recently journalists tended to ignore such efforts and dismiss academics as not being of the real world. More recently a middle ground has evolved with the increasing numbers of journalism practitioner/academics who are prepared to reflect and seek improvements in their discipline. The issues are constantly discussed (see Keeble 2009, Frost 2011). Keeble says:

Ethical inquiry is crucial for all media workers – and managers. It encourages journalists to examine their basic moral and political principles; their responsibilities and rights; their relationship to their employer and audience; their ultimate goals. Self-criticism and the reflective, questioning approach are always required. And journalists need to be eloquent about ethics and politics, confident in articulating and handling the issues – and imaginative in their promotion of standards, both individually and collectively (2009: 1).

The intelligence and journalism ethical boundary

Aside from the ethics of the intelligence agencies in their general operations and more specifically when dealing with the media, there is the question of the ethics of the media when dealing with intelligence stories. The relationship between intelligence agencies and the news media is complex and often contested.

As a young reporter I became aware that the government's then position to 'neither confirm nor deny' was open to exploitation by unscrupulous journalists. Very early in my career I sat opposite a very ambitious freelance who claimed excellent MI5 sources. He used to make great play of talking to his 'source' on the phone in front of me and then using me to confirm the conversation took place when editors were present. It took me a while to realise he was probably talking to the speaking clock. I also came to suspect that many of the phantasmagorical intelligence sources of 'red scare' stories in the tabloids of the time citing MI5 or MI6 sources were probably fabricated or planted. One of the advantages of the accredited journalist system (see Lashmar 2013) and formal links to the agencies is that falsification on this scale no longer occurs as there is now a check system in place and politicians are much more likely to denounce a wrong or inaccurate story on intelligence issues. This is an important ethical development for journalism given reporting intelligence is such an important part of journalism's fourth estate duty.

It is important to state that reporting of intelligence today is not conducted without restraint. In the heat of the anti-CIA backlash of the 1970s journalists of the left and alternative press took the view that identifying officers of the agency was acceptable given the undemocratic work intelligence agencies had undertaken. Naming names was a point of great tension between the intelligence agencies and parts of the news media. Philip Agee: a former CIA officer, revealed the identities and location of up to 250 people working for the CIA (Moran 2013: 190). For years, the *Covert Action Information Bulletin* published the names of active-duty CIA officers and other intelligence operatives. With the pre-1975 excesses of intelligence agencies in the West laid bare and condemned by inquiry and the slowly improved oversight, the practice of naming intelligence officers was increasingly seen by editors as only justifiable in exceptional cases. On each occasion the UK news media have sought to publish information that suggests inappropriate behaviour by

intelligence agencies they have met with condemnation by government. The publication of the Snowden documents puts the recurrent debate into a contemporary light and, therefore, makes for a useful case study to discuss the important issues at stake.

Case study: Snowden – the contemporary tension

American computer specialist Edward Snowden is a former CIA employee and National Security Agency (NSA) contractor who established unauthorised contact with American journalists from late 2012. On 20 May 2013, he flew to Hong Kong, and so was out of US jurisdiction when the initial news stories based on his leaked documents were published. A wide range of Snowden's leaked documents have been published by media outlets worldwide, most notably the *Guardian* (Britain), *Der Spiegel* (Germany), the *Washington Post* and *The New York Times* (US), *O Globo* (Brazil), *Le Monde* (France), and news outlets in Sweden, Canada, Italy, Netherlands, Norway, Spain, and Australia (Greenwald 2013). On 23 June 2013, Snowden landed in Moscow's Sheremetyevo International airport. Snowden remained in the airport's transit zone for 39 days until granted temporary asylum by the Russian government on 1 August where he has remained since. These documents reveal operational details of a global surveillance apparatus jointly run by the 'Five Eyes' countries (namely the UK, US, Canada, Australia and New Zealand) in close cooperation with diverse commercial and international partners. Glenn Greenwald, the then-*Guardian* journalist who analysed many of Edward Snowden's documents, summarised his perception of NSA's objective as:

I think everybody knows by now, or at least I hope they do after the last seven months reporting, that the goal of the NSA really is the elimination of privacy worldwide – not hyperbole, not metaphor, that's literally their goal, is to make sure that all human communications that take place electronically are collected and then stored by the NSA and susceptible to being monitored and analysed (2013).

The political controversy

The sheer scale of NSA-GCHQ operations clearly surprised many senior politicians who thought they had been briefed fully on the activities of the intelligence agencies. Other commentators have unreservedly attacked Snowden for his leaks. There are clear political and professional polarities in position taken on Snowden. In the

UK Charles Moore, the former editor of the *Daily Telegraph*, said:

In traditional accounts of Hell, sinners end up with punishments that fit their crimes. Rumour-mongers have their tongues cut out; usurers wear chains of burning gold. On this basis, it will be entirely fitting if Edward Snowden spends eternity in a Moscow airport lounge (Moore 2013).

The UK government and the Prime Minister, David Cameron, attacked the *Guardian* for publishing the Snowden material.

As we stand today, there are people in the world, who want to do us harm, who want to blow up our families, who want to maim our country. That is a fact, it's not a pleasant fact, but it's a true fact

Cameron maintained that the UK's intelligence agencies are fully accountable:

So we have a choice, do we maintain properly funded, properly governed intelligence and security services, which will gather intelligence on these people, using all of the modern techniques to make sure that we can get ahead of them and stop them, or do we stop doing that? What Snowden is doing and to an extent what the newspaper are doing in helping him is frankly signalling to people who mean to do us harm, how to evade and avoid intelligence and surveillance and other techniques (Hope and Waterfield 2013).

Sir John Sawers, head of MI6, when appearing in front of a parliamentary committee in November 2013, addressed the impact of the Snowden revelations by questioning the qualifications of journalists and senior editorial staff in deciding what can be published.

I'm not sure the journalists managing these publications are particularly well placed to make that judgement ... What I can tell you is that the leaks from Snowden have been very damaging, they have put our operations at risk. It is clear our adversaries are rubbing their hands with glee, al Qaida is lapping it up (Marszal 2013).

At the same ISC hearing the head of GCHQ, Sir Ian Lobban, said:

The cumulative effect of this global media coverage will make our job far, far harder for years to come. ... What we have seen over the last five months is near daily discussion amongst some of our targets (ibid).

The *Guardian* editor, Alan Rusbridger, explained to a parliamentary committee that the paper consulted with government officials and intelligence agencies, including the GCHQ, the White House and the Cabinet Office, on more than one hundred occasions before publication (Rusbridger 2013). There is a considerable amount of material in the Snowden documents on actual UK anti-terrorist operations. Of the estimated 1.5+ million documents said to exist in the Snowden cache, a personal source has told me that almost 60,000 are said to refer to GCHQ. So far (November 2015) only a very small percentage, no more than 1 per cent, has been published by the news media. None have been from documents revealing active anti-terrorist operations.

Even within journalism there are strong differences of opinion about who should be arbiters on national security. Chris Blackhurst, the editor of the *Independent* newspaper at the time of Snowden's revelations, said in response to the *Guardian's* publication: 'If MI5 warns that this is not in the public interest who am I to disbelieve them?' Blackhurst further commented; 'If the security services insist something is contrary to the public interest, and might harm their operations, who am I (despite my grounding from Watergate onwards) to disbelieve them?' And he wonders; '...what it is, exactly, that the NSA and GCHQ are doing that is so profoundly terrible?' (Mirkinson 2013). In his 2010 book, Gabriel Schoenfeld, a senior fellow at the Hudson Institute, and former Mitt Romney election adviser, challenged the right of the press to make unilateral decisions to 'publish and let others perish' or as he quotes a newspaper editor, to publish 'no matter the cost'. He said that the fourth estate had changed beyond recognition since the era when Roosevelt could speak of the 'patriotic press'.

Indeed, with a press now wantonly compromising operational counterterrorism programs, things have swung to an extreme without precedent in our history (2010: 275).

In the wake of Snowden, trust would seem to be at an all-time low and not only in the UK. As a reflexive practitioner I recognise that there may be truth in Schoenfeld, Lobban and Sawyer's points. Journalists exist in a political economy and are under pressure to publish major exclusive stories. I also recognise that journalists can and have claimed public interest for publishing completely indefensible articles. The UK tabloids have a long track record of such hypocrisy. But in my experience, as a practitioner, many

parts of the news media do take their responsibilities seriously. I would also argue that in over three decades of covering intelligence agency activities I have seen many exposés and often the intelligence agencies and their political masters' responses have been to accuse editors and journalists of 'putting lives at risk'. I would observe that in every case I can recall the claim was proven to be without merit.

Nonetheless there have been continuing allegations that the *Guardian* and other news media that published Snowden's document have undermined part of the Five Eyes operations against al-Qaeda. On the other hand their release has created a watershed moment in the discussion over the balance between privacy and surveillance, the public's right to know versus security. No one feels the current *ad hoc* adversarial negotiations over publication are the right way to resolve such tensions. This paper examines the historical and current situation on oversight of intelligence and the news media as a preamble to how an agreed mechanism could be put into place. Changes since the early 1990s to intelligence legitimacy make this possible.

The translucency of intelligence

As a result of the many revelations in the 1980s of intelligence service wrongdoing, regulation followed. In November 1993 the government published its Intelligence Bill and simultaneously published, for the first time, the estimates for the intelligence services – then £900m. for the year (Gill 1996: 313). Gill stated the main innovation in the Act, and one which apparently provides some potential challenge to executive information control, is that the Intelligence and Security Committee (ISC) can examine the expenditure, administration and policy of the Security Service, SIS and GCHQ:

[The Intelligence and Security Committee] has nine members from either Lords or Commons, who will be appointed by the Prime Minister after consultation with Leader of Opposition. The committee will report annually to the Prime Minister, and other times if it wishes, and a copy of the annual report will be laid before each House, subject to any exclusion of 'prejudicial' material made by the Prime Minister but within no specific time limit (1996: 323).

While parliament's ISC is the most high profile of the UK's intelligence oversight mechanisms, there are a number of oversight organisations that intermesh with the intelligence agencies.

The ISC is complemented by three judicial commissioners.

- 1) The Intelligence Services Commissioner provides independent judicial oversight of the conduct of the Secret Intelligence Service (MI6), Security Service (MI5), Government Communications Headquarters (GCHQ) and a number of other public authorities. The ISC commissioner, Mark Waller, works with the Home Office.
- 2) There is also the Interception of Communications Commissioner's Office (IOCCO). The commissioner is a judge, Sir Anthony May, and his function is to keep the interception of communications and the acquisition and disclosure of communications data by intelligence agencies, police forces and other public authorities under review.
- 3) The surveillance commissioner oversees surveillance by police and other public bodies, other than communications interception which is covered by IOCCO.

In addition there is:

- 1) The Investigatory Powers Tribunal (IPT), a court which investigates and determines complaints of unlawful use of covert techniques by public authorities infringing our right to privacy and claims against intelligence or law enforcement agency conduct which breach a wider range of human rights. In February 2015, for the first time in its fifteen year existence, the tribunal issued a ruling that went against one of the security agencies. It ruled that GCHQ had acted unlawfully in accessing data on millions of people in Britain that had been collected by the US National Security Agency (NSA), because the arrangements were secret (Shirbon 2015).
- 2) The Independent Reviewer of Terrorism Legislation, David Anderson QC. The independent reviewer's role is to inform the public and political debate on anti-terrorism law in the United Kingdom, in particular through regular reports which are prepared for the home secretary or Treasury and then laid before parliament. The uniqueness of the role lies in its complete independence from government, coupled with access based on a very high degree of clearance to secret and sensitive national security information.

Also exercising accountability are one-off inquiries that take into consideration the role of the

intelligence services. The failure to find Weapons of Mass Destruction (WMD) in Iraq caused such public concern that an inquiry was set up by then-Prime Minister, Gordon Brown, under Sir John Chilcot which includes the role of the intelligence services. To much criticism, the inquiry will not report until 2016, thirteen years after the invasion of Iraq. There is growing evidence of MI6 and MI5 involvement in rendition and condoning torture in third party countries (Cobain 2015). After much pressure, Prime Minister David Cameron ordered an inquiry in September 2014 and assigned the task to the ISC. A coalition of nine human rights groups, including Reprieve, Amnesty International and Liberty challenged the decision. In a letter they said they had lost all trust in the committee's ability to uncover the truth. 'Consequently, we as a collective of domestic and international non-governmental organisations do not propose to play a substantive role in the conduct of this inquiry.' David Cameron had previously promised that the inquiry would be headed by a senior judge (Townend 2014).

There is much evidence that intelligence agencies need to be subject to oversight as there are multiple ethical failures. The official oversight mechanisms have not impressed the wider critical world especially the ISC who were left as fools or knaves by the release of the Snowden documents. Either they knew that surveillance had exceeded that agreed in which case they are knaves or they did not know and were fools.

In my PHD thesis, I argue that the UK news media, as with those in other Five Eyes countries, have been the most effective oversight mechanism (Lashmar 2015: 71). There is also surprisingly little evidence of the news media causing harm rather than reform by those exposes. Observing that governments do not want to recognise the validity of this aspect of the media's fourth estate role and increasingly take countermeasures, I stated:

A profoundly serious issue for journalism is the use of surveillance techniques to prevent journalists acquiring and maintaining confidential sources, especially in the public sector. Surveillance is now so pervasive it makes the development of intelligence sources in the sector very difficult, and consequently the news media's duty to provide critical accountability of power is much reduced. In just a few years, journalists have gone from a situation where they could give a reasonable guarantee of protecting a confidential source, to a situation that they have to

assume, at least when it comes to investigations into government, the public sector and the related private sector, that such guarantees are hard to give (ibid: 74).

In the US, the Barack Obama administration has been responsible for more prosecutions of sources than any previous administration. *The New York Times* reporter Jeff Stein has asked whether we are at 'The end of national security reporting? ... The upshot is that federal prosecutors have a wide leeway in getting subpoenas to track reporter's email and telephone calls and compel testimony in court' (Stein 2013). As traditional sources have been closed down there have been massive data leaks such as WikiLeaks and the Snowden documents. So the tension between intelligence and the proactive news media is likely to continue, each with a very different perspective on publication of intelligence activities.

A resolution?

How can negotiated arrangement be arrived at in between these two positions? The method used in the UK, mirroring a similar approach used in the US, has been *ad hoc* discussions between the two sides. How to find an agreed ethical process and then create a practical mechanism to create a consensus? Any news organisation publishing secret information takes a great risk. One urgent issue is to find a way of working out what can be published within the greater public interest. Recent evidence suggests a working arrangement will not evolve unilaterally and there clearly needs to be a brokered discussion. How to do this? To devise such an arrangement one has to look at how the current situation functions. There is a legal rather than ethical regime in place where the government can use the Official Secrets Act (OSA) and other statutes to deter publication of sensitive material. Government and the judicial system have a marked reluctance to use the OSA as it can be interpreted as government bullying. But it would not have worked in this case as Snowden is not a British subject and not in the British jurisdiction so he can not be prosecuted. The government could have prosecuted the *Guardian* but that was very unlikely to succeed.

While there is no longer a public interest defence to the OSA it is likely that many damaging documents and issues would be discussed in court. The government could have tried to injunct the *Guardian* but the courts in the UK are hesitant to undertake prior restraint as it is a clear infringement of the freedom of the

press. Indeed, there was a threat of injunction if the *Guardian* did not destroy the Snowden hard drives. As things stand, *ad hoc* meetings are the current method of discussion if not resolution between editors, government and intelligence heads on major disclosures. The *Guardian* is considered one of the more ethical and responsible of newspapers with a low rate of complaints to regulators. Other news media are less scrupulous.

In 2015, the relationship between intelligence and the media in the Western world is probably as fraught as it has ever been. This is as true for the UK as it is for the other Five Eyes countries and their 25-plus third-party partner countries. Exposés of spying on allies, most notably German Angela Merkel's telephone, have been embarrassing. At the time of writing, allegations and counter allegations are still reverberating. Some publications including the *Guardian* and *The New York Times* were accused of serious irresponsibility. The agencies were accused of introducing mass surveillance by stealth but counterattack that media are putting lives at risk. As proven instances of people being killed as a result of media exposés of intelligence are very few and disputed that accusation does not have a lot of traction. Arguments that exposure impacts on reputation and intelligence tradecraft are more compelling. Editors have not published specific details of anti-terrorism operations, that they are known to possess, and have shown restraint. The journalists I have interviewed (2014/15) from the Five Eyes countries, who had nearly all covered national security stories, indeed breaking major stories, were deeply sceptical of this intelligence agency response, seeing a disingenuous response of secretive agencies that have been caught behaving badly. On the other hand it is recognised that journalists can be driven by more than *fourth estate* ideals to publish career enhancing or ratings increasing scoops.

In the public interest

What has happened at Rupert Murdoch's News International is catastrophic for quality journalism. Public revelation of wholesale phone hacking and bribery of public officials has seriously damaged all of journalism. It has also accustomed the nation to the sight of journalists being arrested and tried. The negative impact of this will be felt by honourable journalists for decades. It will make it far harder to argue a public interest defence to controversial publications like the Snowden documents. What is the public interest? As Allan states '...the emergence of a newspaper press committed

to advancing “the public interest” by reporting reality in the social world in a non-partisan manner has been a fairly recent development’ (Allan 2010: 32). Public interest journalism is, as Frost puts it, ‘a poorly defined device’ (2011: 270). The term has a wider context but for the purposes of this thesis I confine the definition to its meaning for journalism. Journalists will argue that putting information into the public domain that enables the citizen to make an informed decision is acting in the public interest. According to the now-superseded Press Complaints Commission (PCC 2011):

The public interest includes, but is not confined to:

- (i) Detecting or exposing crime or serious impropriety.
- (ii) Protecting public health and safety
- (iii) Preventing the public from being misled by an action or statement of an individual or organisation.

There is public interest in freedom of expression itself (Frost 2011: 270). The concept is very important for journalism, as journalists will sometimes use methods, to obtain information to publish, that would be described as dubious or even illegal and can only be justified if they serve the wider public interest and indeed intelligence agencies might argue the same. There are major differences. The ultimate test of the public interest for journalists may occur in court and is defined by whether a judge or jury accepts that a piece of journalism is in the public interest and finds in favour of the publishers rather than the appellants. Editor of the *Guardian* Alan Rusbridger says in his 2011 Orwell Lecture:

Why is this agreement over ‘the public interest’ so crucial? Because, in the end, the public interest, and how we argue it, is not only crucial to the sometimes arcane subject of privacy – it is crucial to every argument about the future of the press, the public good it delivers and why, in the most testing of economic times, it deserves to survive (Rusbridger 2011).

This paper proposes that there should be a more formal set of arrangements with an independent arbiter body. This could either be an individual or committee, suitably experienced, and agreed by both sides in advance of future publications. The role would be advisory but would have the merit that any subsequent publication or legal action will be mitigated by the

attempt at an agreement. Is there an appropriate existing regulatory body? Regulation of intelligence has remained within government primarily by cabinet responsibility. The ISC was set up to reassure the public that there is cross-party parliamentary scrutiny, and while it has over the last twenty years proved better than expected, the Snowden revelations have placed it in a poor light.

The news media have a number of regulatory mechanisms. Self-regulation of the print news media was conducted by the PCC but this body was entirely discredited by the phone hacking scandal. The PCC had a less than impressive record of dealing with complaints and allegations that it was dominated by the interests of the big news media companies. The post-Leveson inquiry replacement body, the Independent Press Standards Organisation (IPSO) has been launched but not all major print news organisations have joined. There is evidence that new chair Sir Alan Moses is showing an independence of approach that might work in IPSO’s favour and bring more news organisations on board. It is too early to tell whether IPSO would be a suitable vehicle demonstrating a level of independence and judgement that would be respected by editors and Whitehall alike.

For reasons demonstrated above the ISC is generally seen as a sop to the intelligence agencies and unlikely to be seen as a good mediator between the two sides. On paper the office of the UK Intelligence Services Commissioner, Sir Mark Waller, may appear to be a possible mediator. But in March 2014, he was questioned by a parliamentary committee about Snowden’s revelations suggesting GCHQ was acting unlawfully. The committee seemed less than impressed when he told them that as response he went to see a senior official at GCHQ who assured him it was not true. His office is staffed by two people (Sparrow 2014). So this body does not seem a promising option.

Another body which could have a role is the DA-Notice Committee. The Defence, Press and Broadcasting Advisory Committee (DPBAC) oversees a voluntary code which operates between the UK government departments which have responsibilities for national security and the media. It uses the Defence Advisory (DA)-Notice System as its vehicle. The objective of the DA-Notice System is to prevent inadvertent public disclosure of information that would compromise UK military and intelligence operations and methods, or put at risk the safety of those involved in such operations, or

lead to attacks that would damage the critical national infrastructure and/or endanger lives. Any DA-notices are only advisory requests and so are not legally enforceable; hence, editors can choose to ignore them. In June 2013, a DA-Notice was issued asking the media to refrain from running further stories related to Prism (a secret surveillance programme under which the NSA collects internet communications from at least nine major US internet companies) and British involvement therein. As it was ignored, questions have been asked as to whether the committee has outlived its use. This all suggests that a new body comprising of independent and qualified experts agreed by representatives of all shades of opinion from both sides needs to be developed.

How can ethics been seen to be central to this process? It is probably fortunate that the newspapers that have published Snowden material are all highly regarded, even if their judgement has been called into question. If such material had been published by a less scrupulous news organisation it is hard to imagine what might have happened.

Conclusion

Intelligence ethics theory may be at an early stage but it is a step into the future. I conclude that intelligence community could be more open and accountable without endangering its *modus operandi* and all intelligence operations should be considered in terms of human rights. The quality of reporting of national security is too often simplistic and poor. Journalism ethics should drive professionalisation. The author believes the professions of news journalism and intelligence can move to a more ethical relationship which allows for a greater level of accountability and transparency for intelligence while allowing the intelligence community to operate, without unnecessary constraint in their task of protecting the security of the democratic state. This paper suggests there needs to be an effective mechanism for bringing the two sides together but what organisation would be trusted still needs to be ascertained or created. The existing bodies either have failed on other ethical issues or are at too early a stage to ascertain whether they could incorporate the role effectively into their remit.

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